

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

A&E Flooring Inc.

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 I unpaid commissions
RSA 275:43 V unpaid employee expenses
RSA 275:48 I illegal deductions

Employer: A&E Flooring Inc., 59 Londonderry Tpk, Hooksett, NH 03106

Date of Hearing: April 6, 2015

Case No.: 49867

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he is owed \$16,533.00 in unpaid commissions due on previous sales of the company. He alleges he received a \$15.00 bank fee for a check returned as insufficient funds by his financial institution. He also seeks \$247.65 for Flexible Spending Account which had accumulated unused funds at the end of the year.

The employer agrees the claimant is due the commissions claimed. However, he argues the he made car payments totaling \$2,104.00 on the claimant's behalf, which should be deducted from the \$16,533.00 claimed. He claims he had a conversation with the claimant in which the claimant wanted the employer to continue to make his car payments after his employment ended. The employer stated they could not afford to continue making car payments for someone who was not employed. The claimant asked him to continue making the car payments as payments towards the commissions owed. The employer agreed and made payments totaling \$2,104.00.

The claimant testifies he does not recall that conversation.

The employer states he did not know a check had been returned and that any fees had been incurred by the claimant. He agrees this is due to the claimant.

The employer argues that the Flexible Spending Account has a provision to "use it or lose it", which is not the responsibility of the employer.

They are attempting to close down the business without filing bankruptcy. They have been unable to make any payments to the claimant as a secured creditor will not authorize any payments.

FINDINGS OF FACT

The claimant worked for the employer from 1992 through September 26, 2014, when the employer informed him that "his time was up."

The parties agree there are outstanding commissions due to the claimant.

The employer argues he should receive credit for \$2,104.00 in car payments they made on the claimant's behalf. He provided credible testimony that he had a conversation with the claimant in which the claimant wanted the employer to continue to make his car payments after his employment ended. The employer stated they could not afford to continue making car payments for someone who was not employed. The claimant asked him to continue making the car payments as payments towards the commissions owed. The employer agreed and made payments totaling \$2,104.00.

The employer is given an offset for the \$2,104.00 in car payments made on the claimant's behalf, at the claimant's request.

The Hearing Officer finds the claimant proved by a preponderance of the evidence he is due a portion of the claimed commissions in the amount of \$14,429.00 (\$16,533.00 - \$2,104.00).

As the employer agrees the claimant is due \$15.00 in employee expenses for a returned check fee, the Hearing Officer finds the claimant proved by a preponderance of the evidence he is due the claimed employee expenses in the amount of \$15.00.

Upon repeated questioning by the Hearing Officer, the claimant credibly testified that the employer had remitted the deductions made from his wages for a Flexible Spending Account to the appropriate party. The claimant simply did not use all of the funds he had withheld.

The employer remitted the deducted wages as required by the parties' agreement for the Flexible Spending Account. They fulfilled their requirements under RSA 275:48.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he is due the claimed deductions made for a Flexible Spending Account.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant proved by a preponderance of the evidence that he is owed a portion of the claimed commissions/wages, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$14,429.00.

As RSA 275:43 V considers the payment of employee expenses to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant proved by a preponderance of the evidence that he was not paid all employee expenses due, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$15.00.

As RSA 275:48 I allows an employer to make certain deductions from employee wages, and as this Department finds that the employer made deductions from the claimant's and remitted the wages to the appropriate source, it is hereby ruled that this portion of the Wage claim is invalid.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$14,444.00 (\$14,429.00 + \$15.00), less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: April 14, 2015

MJD/kdc